UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Kevin Scott Karsjens, David Leroy Gamble, Jr., Kevin John DeVillion, Peter Gerard Lonergan, James Matthew Noyer, Sr., James John Rud, James Allen Barber, Craig Allen Bolte, Dennis Richard Steiner, Kaine Joseph Braun, Christopher John Thuringer, Kenny S. Daywitt, Bradley Wayne Foster, Brian K. Hausfeld, and all others similarly situated,

Plaintiffs,

-vs-

Lucinda Jesson, Dennis Benson, Kevin Moser, Tom Lundquist, Nancy Johnston, Jannine Hebert, and Ann Zimmerman, in their individual and official capacities,

Defendants.

Court File No. 11-cv-03659 (DWF/JJK)

VIDEOTAPED DEPOSITION

OF

DENNIS L. BENSON

DATE TAKEN: 8/11/14 BY: Amy L. Larson, RPR

Q. Sir, would you state your full legal name for the record.

A. Dennis Lee Benson.

Q. Mr. Benson, tell me how long -- well, let me back up.

Tell me what position that you held at MSOP.

A. I was the executive director from March -- I

believe March 1st, 2008, until I resigned or retired in June of 2012. June 5th, I believe is my retirement date.

Q. And why did you leave the program?

A. Well, I had previously retired from corrections after 34 years, and that was at my kind of rule of 90, so I had enough time that I didn't have to come back to work. But I had been watching this program struggle for many, many years, and I had had conversation with Wes Kooistra at the time and he was interested in employing me if I was interested in working, so I decided I would give it a shot and see if I could be helpful.

Q. And why did you resign?

A. Well, it was just time. I had this -- I had been talking with -- as we were speaking, I was talking with my old college roommate who said that he was in -- I knew he was in the casino business, but his son would possibly be selling his casino in Billings and was I interested.

And I've always had -- I've always been kind of an entrepreneur. I've done all kinds of funny things on the side, including

16 years in the concert business in Somerset, Wisconsin.

And so I thought it would be a great retirement gig, it's -- they're easy to run and if you got a good manager you can be absent. We travel a lot, so -- and the stress of MSOP and the politics around it were very frustrating to me.

Q. Okay. Let me back you up a little bit. You mentioned a gentleman I think named Wes -- I couldn't --

A. Kooistra.

Q. All right. And Mr. Kooistra's position in the -- in the --

A. He was a --

Q. -- government?

A. I believe he was an assistant commissioner in DHS. He had been with DHS for a number of years.

Q. At that time, 2007 or 8 when he first started talking to you, was Mr. Ludeman the

commissioner?
A. Yes.
Q. Cal Ludeman?
A. Cal Ludeman.
Q. All right. And you mentioned that before you had these conversations, or at some time before you took the job, that you understood there were lots of problems at the MSOP.
A. Yes.
Q. Those are my words. By the way, let me -- let me just make this clear for the record. Sometimes I'm going to ask questions where I sort of summarize what you say. Those are my words --
A. Yup.
Q. -- okay? So I want you to use your words.
A. Well, the Department of Corrections, going way back to -- I started in corrections in 1974, and I was a case worker in 1977, and part of the role of a case worker at a prison was to -- we all had a couple of cases down at the St. Peter Security Hospital.

So going way back to that time, DHS, in my opinion, struggled with the management of these patients, as they would call them, many

of them were dual commits, so they were both offenders and patients, and how to -- how to manage them inside of a hospital system.

And then more recently in 2005, I believe, and 2006, both Easter Sundays, there were escapes from the St. Peter Security Hospital that got lots of attention and DHS was very interested in -- in trying to get some help around some security issues that they obviously had.

So I was the deputy commissioner then in corrections, and we actually sent some folks over from corrections on mobility assignments to do some analysis and do some training and develop some policy around accountability of patients, I guess would -- would be the primary focus, because at that point it was no more complicated than we've got to make sure the public safety is ensured.

And their fences were inadequate, their counts were -- in my opinion, again, were inadequate. And we sent a captain over for a year, we sent a -- an investigator over for a couple of years to help develop some systems around patient accountability.

Q. And this was in the 2005, 2006 time frame?
A. A little bit later than that.
Q. Even maybe into 7?
A. Yeah. They were over there -- somebody was over there even up until the time that I came to MSOP in 2008.
Q. Was this primary -- primarily a problem at St. Peter or was it both St. Peter and Moose Lake?
A. Well, at that time it was primarily St. Peter. But as the building project was proceeding up at Moose Lake, they were starting to move some of the more difficult-to-manage patients from St. Peter to Moose Lake because it had a better security system.

Q. Okay. When you were asked to take the job, was there anything in particular that they asked you to do?

Well, first of all, who approached you about the job other than, is it Mr. Wes --

A. Kooistra.

Q. Kooistra?

A. Mike Tessneer was also involved in those conversations. He was -- he reported to Wes. And, actually, I believe he was directly responsible for MSOP at that time. I don't know what his title -- I can't even recall his title, but the hospitals and state operated -- they call it SOS, State Operated Services, were all under Mr. Tessneer.

Q. He was at the commissioner's office --

A. Yeah.

Q. -- or worked for DHS anyway?

A. Right, right, and then he reported to Wes.

Q. And who was the -- who was the MSOP executive director at that time?

A. Jack Erskin.

Q. And -- and had he announced his retirement, was he leaving? I mean, what --

A. No.

Q. Okay.
A. No.
Q. So they approached you about taking this position when you retired from the Department of Corrections; is that fair?
A. Right.
Q. Okay. And what did they tell you they needed?
A. Well, somebody to manage MSOP was kind of the bottom line. It was a program that, in my opinion, was -- was a real challenge to the state hospital system to manage. It was growing in ways that historically it had not grown, and managing a growing population was something that I had some firsthand experience in when I became a deputy commissioner in -- in two thousand -- or, excuse me, 1996, the prison population was 4,500. When I left in 2008 it was 9,000.

So we had managed the doubling of the prison population in Minnesota during those 12 years and we became pretty good at bonding and building and trying to find the next bed for the next offender that came in, and at the same time trying to manage growth and

prepare people for promotion in other positions and challenges, and trying to keep the program a high priority, which is always challenging when money is tight and you tell legislators you need a sex offender program at the new facility in Rush City, they see that differently than we see it. So I had some of those qualifications, again, that I thought could be helpful.

I was also a prison warden for about five years, just short of five years at both Stillwater and Oak Park heights, so knew about running closed facilities, and also had a fair amount of experience not as a program administrator, but I worked very closely with the education program, sex offender programming and chemical dependency programming in the department.

It became a passion of mine. I had a -- unfortunately, my oldest son ended up in a treatment center back in the early 2000s, and I saw the magic that good treatment can work and kind of took that on as a personal project and challenge to keep adding beds.

So the other important piece of my resume

is when I started in corrections we had not one single inpatient treatment bed in the system. When I left we had somewhere around 600 treatment beds, both chemical dependency and sex offender treatment, and some of them were combined programming, and we also did an awful lot around the education initiative in corrections.

So, again, I saw this job as contrary to what I know patients will say is it was not my intention to turn it into a prison, but rather provide good programming inside of a secure environment.

Q. With respect to Mr. Tessneer and Mr. Kooistra, did they tell you anything else about what they wanted you to do when you took over? I mean, do you recall the specific conversations, that they said something like we want to, you know, fix these security problems at St. Peter or we want to fix these, you know, whatever kind of problems?

A. Lots of -- lots of conversation about some of the security aspects of the program and the two physical plants, and they also wanted me

to manage the construction of the new facility, which had been planned prior to my coming on. So there was very little I could change about the -- around the blueprint.

But the other thing that they did that created a challenge for me when I came on is added all these beds with very little program space. So that's a problem inside of a treatment facility.

So my first project was to put together a bonding initiative to add infrastructure, and we did that successfully. We convinced the legislature, I believe in two thousand -- bonding years are, what, odd years or even years? Anyway, 2007, I think it was, to add 45 million in infrastructure up at Moose Lake, so we got that going.

And that was -- in the process of opening, the day I left I did a tour and they were ready to open the new infrastructure. So we had conversation around that.

We had conversation around treatment protocol and developing a treatment protocol that was cutting edge. I don't know -- there are lots of numbers, but there were a number

of treatment -- or clinical directors prior to my hiring Jannine, so there was -- there was not good stability in the treatment program at MSOP, again, in my opinion, and I'm not a treatment expert.

But I do know enough about treatment environments to know that good treatment, in my opinion, was not occurring when I got there in 2008.

And we were also concerned about a reintegration initiative, developing an initiative to move people through the program and getting them prepared for release, so we developed a community preparation program that they had some semblance of that when I came in 2008, but it was loosely wired together and, again, it was, in my opinion, not very defendable in terms of how they selected people to prepare them for the last phases of treatment, which was -- which gave them ground privileges and privileges to go into the community and -- and there was also some things lacking about who was selected to -- to go down to the lesser secure facility, which we decided should be

St. Peter.

That community had had lots of experience with working with marginalized populations and we -- I felt that we could develop an end phase to that program more successfully down there than we could up at Moose Lake where the community pretty much gave us an edicts, said we never want anybody outside of the fence.

So -- so there was lots of concern about this population, as there still is today, and how they're managed. So the politics of all this was a new experience for me, and I have considered myself a veteran of navigating legislative waters and getting buildings and developing, but there was a -- a new fear of dealing with this population.

And, again, remember, this was post Dru Sjodin, which in my opinion, was kind of the turning point for Minnesota in how we manage sex offenders.

Q. So did you have any specific direction with respect to people being released from the program before you started?

A. No, I didn't. I certainly expressed my

concern about the fact that nobody had been released in many years. In fact, it was my team that started to research that. And there were a couple of guys that had been released from kind of the precursor to MSOP back in, oh, gosh, the late '80s, I believe, and nobody was keeping track of them.

We found one of them out on the East Coast who had committed additional crimes, and we worked for about two years to extradite him or get him to come back to Minnesota. And then there was another guy we found that was living in a -- oh, an assisted-living center or halfway house, very responsibly, down in, I believe, southern Minnesota.

So we -- I wanted to make sure there were no fugitives out there that were going to haunt the program going forward and impact on our ability to try to do the right thing with respect to developing this treatment program.

Q. How would you describe your job duties as executive director when you started in March of 2008, just generally?

A. Well, to develop a -- a program for civilly

committed sex offenders that was defendable and that was not a prison environment, that was not a -- an attempt at snookering the courts or the legislators, and to do that in a responsible way that still addressed concerns.

But it was very -- I tell a story back in the '70s when I started at the prison it was chaotic. It was -- it always reminded me of the childhood book by Dr. Seuss, If I Ran This Zoo Here's What I Would Do, and it goes on to talk about letting the zoo animals run the zoo. And I'm not making the analogy that sex offenders are zoo animals, but rather they certainly that a real hand in what occurred every day in these facilities, and I think that it ought to be the other way around.

I think that as an administrator we have responsibility to develop a climate that's conducive to change, and I don't believe that was the case at either Moose Lake or St. Peter.

So my first order of business was to develop a six-month strategic plan around

developing that climate. And then the next six months would be implementation and hiring appropriate staff so that good treatment could occur in this environment.

And I told them when I drove up, if you want a caretaker, if you want somebody to just manage a closed environment, I'm not the right guy. If we aren't going to move people through the program, I don't -- you know, that's not what I do.

Q. Is that part of why you resigned in 2012, because you were frustrated that you couldn't actually move people through the program?

A. Well, I had moved the first person in 20 years through the program, so I had a success in getting Clarence --

Q. Mr. Opheim?

A. Yeah, through the program. But I -- to some -- I was frustrated, there was no question about it. I was frustrated with the legislature, I was frustrated with the Pawlenty administration, to some degree, because it was difficult to get buy-in for what had to occur if we were going to responsibly release people.

But, you know, that was passive aggressive stuff. Nobody looked me in the eye and said we don't ever want anybody to get out, but actions speak louder than words.

And we just -- we had trouble doing simple things around this program that, in my opinion, made lots of sense, because nobody wanted to draw attention to it.

For instance, the sex offender statute was buried inside of the contours of the DHS statute, and it, in my opinion, clearly had to be a separate statute. There were all kinds of issues.

And we put together a committee that was looking at pulling out the civilly committed sex offender pieces and making it its own statute. And it took me four years to get that done. I did -- we did get it done. I think it actually happened, probably, part of it the year I left and then the rest of it the following year.

But that was an example where we got to conference committee and, oh, they just didn't want to deal with it because it was going to draw attention. And, you know,

they're right too, somebody else could, you know, add something germane to that bill that was counterproductive or even tougher on sex offenders or there was -- continues to be talk about sentencing sex offenders indeterminately, so then they could move the problem from MSOP to corrections where people would get an indeterminate sentence and they'd never get out of prison. And they could do that probably much easier than under a -- a civil process.

So, yes, I was frustrated. Then the Dayton administration came along and I -- I can't say enough good things about Commissioner Jesson. I think she really tried hard to move the program in the right direction.

But I met a couple of times with her and governor staff, and they never said don't do this, don't do that, but I couldn't get much done those -- I think I was with him a couple of years. We just were -- we ran into obstacles.

And then viewing the process, when I -- you know, I -- it was there when John, I

can't say his name, but he went before the judges and he was denied conditional release.

And that was frustrating, I think not only to me, but treatment staff too, because the focus of these hearings continues to be the static part of the record, the part that's never, ever going to change. They spent several days kind of regurgitating what occurred 20, 30 years ago that resulted in his commitment.

Which, you know, I kind of get that, but it seems to me, you know, the factors that a release panel should be really concerned about what has happened, what's transpired since he came into the program to now.

So I -- I just -- again, the politics around the program are really thick. And I'm a doer. I've always been able to accomplish a fair amount, but certainly didn't feel the same level of success with this program that I had with corrections.

Is it fair to say as executive director you were the sort of final voice of all the decisions that were made within MSOP?

A. With respect to operational issues I think it's fair to say.

Q. Okay. Is there anything in particular in the decision-making at MSOP that you did not have direct final responsibility for?

A. Well, I -- I certainly consulted with my boss when we were ready to move somebody to the community prep program. If we were going to do something with respect to a field trip or something that could be controversial, I would always run that by either Wes or Anne Barry at the end or -- I didn't have a lot of direct communication with the commissioner.

But the SRB process, when it was time to put somebody up for release or up for consideration, I'd certainly consult with my boss as well and -- but I think that was more of a notification. I don't think anybody ever said no, don't do that.

Q. Mr. Benson, let's go back to when you started at MSOP as the executive director in 2008. What did you see in terms of the condition of the program? Maybe it would be easier if we took it by area, but however you want to describe it, what did you see as the issues?

A. Well, prior to even coming to MSOP, again, I had done some tours. And as I said we had some corrections people over there, so I had

reason to go through the facilities. But one of the things I did when I was in the process of retiring from corrections and taking this job, is I -- I held I think it was eight what I called transition meetings where I would bring MSOP staff over to corrections and just talk about various things.

Q. Let me interrupt you for a second. Was this before or after you started?

A. This was before.

Q. Okay.

A. This was probably January, February of 2008. And I would -- for instance, I had the HR director to talk about staffing numbers, and I had health care come over one Friday, and I had a transition team. And, again, in terms of committee, there may or may not still be minutes of some of that somewhere.

But we would talk about a variety of different issues so that I had some idea of what the priorities were going to be when I ended up over there.

And I guess the -- during the course of those meetings I -- one of the conversations I had with the -- I had a bunch of therapist

s that came down, and I remember this young female therapist telling me -- she was pregnant, and she was almost in tears, and she said, you know, I was going home last week and a patient told me the only reason you're going home tonight is because I'm letting you.

And I thought, you know, when I started in corrections back in '74, I was scared too. And we had lots of disturbances my first year, we had homicides, we had suicides, we had lots of unrest, and I remember how hard it was some nights, I worked third watch, evenings, and how hard it was to go to work.

I thought, well, you know, anybody that comes into these places to work should not have to worry about their safety. That is a critical, critical standard that I think anybody that runs one of these places should pay attention to.

And, likewise, if I had a son who, heaven forbid, ended up in one of these places, they should also not have to worry about their personal safety in a facility of this type. So, you know, staff and patient safety was

one of the things that I was aware of, that was a concern.

And I also met with a number of patients when I was going through this transitional process from corrections to MSOP. So I paid close attention to that and the -- kind of the wide open system that may have worked well when the state hospital or the program had a hundred or 150 patients, but as it grew it required more and more order. So I felt that we needed to not necessarily establish control, but establish order in these places.

So we developed a daily routine, we developed a policy around that, and we paid very close attention to, you know, the whole patient/staff safety issue and what it would take to bring that up to a standard that I felt was acceptable. Part of the problem too was crowding, and bringing these new beds on was going to help.

But the best security, in my opinion, is always good programming, and that was the other piece that was missing, is there -- people were in and out of treatment routinely.

The other thing I saw that concerned me, and my -- my attorney, my staff attorney told me the same thing, is that part of the protocol for the previous administration was the officers would be involved in -- peripherally involved in the treatment process doing some documentation and -- and they weren't properly trained.

So there were numerous data challenges by patients that was taking up an inordinate amount of time. So I felt we had to do one of two things. We had to properly train people or their job was going to be security and they were going to be involved in treatment in another, more defendable way.

So we -- we developed a policy around accountability, daily routine, a staff -- or a patient movement policy, so they -- we didn't just open the doors in the morning and kind of freewheel through the day, but there was much more order to it, at least up at Moose Lake.

St. Peter, which I also determined would be the less secure where later phases in treatment would occur, obviously, they'd have

more freedoms down there. But the one thing I found when I got there was there was no curfew. They could stay up as long as they wanted, their doors would be left open.

And many of these people are predators, and we had patients that were being abused, we had patients that were being victimized, we had patients that were being used. And so we addressed issues like that.

We -- I said there's going to be a curfew, we're going to lock the place up at night. And we also had had two escapes in 2005, 2006, so at least at 10 o'clock at night or 10:30, whenever we lock them up, I can't tell you exactly, the exact time, we sort of know we got them from 10 at night to 6:30, 7:00 in the morning.

And that was -- I got a reaction to that. You know, they continue to say, I'm sure they are today too, this is a treatment program, this isn't a prison and da, da, da, da, da. But it's no different, in my opinion, in submarines or aircraft carriers or anything else, there's order in those societies.

And I've always said these are like

little villages, little towns, there's got to be some sense of order. So we tried to do what was reasonable. We tried to do it in a way that didn't impact on treatment or the treatment day, but also ensured some -- a higher degree of staff safety and patient safety.

So that's a long answer to a short question, but one of the things I saw was a climate that was not conducive to good treatment, a climate that lacked order. It was almost chaotic, in my opinion, in some respects. So we had to do some things to address that.

Room allowable items, in my opinion, were completely out of control. And when I was in prison, running prisons, I knew that there were lots of standards around fire safety that obviously had been ignored by DHS, in my opinion.

So when I called the fire marshal, he said that, yeah, we've -- we've been told that those standards really don't apply to our facilities. But I think there were lots of genuine, not fabricated fire and safety

issues with respect to what they were allowed to have in their rooms, to and including mattresses and bedspreads that were not fire retardant, and that was a problem, from my perspective.

They were also cooking food down in the kitchen areas, which was a privilege that was not controlled, everybody got to take advantage of that, and the ductwork was -- in some cases had a quarter inch of grease in them, and vent fires are very dangerous. So I -- I asked the fire marshal to do a -- an inspection and give me a report and be very honest about what his concerns were with respect to those units and the allowable items and whatnot.

So we did -- we made some changes around that. And that also caused quite a reaction. But, again, in my opinion, it was something that really needed to be done from a safety perspective.

Q. How about with respect to the treatment side of the equation. You mentioned lots of things in that first discussion about the security and -- and needing more order. What

about the treatment program, what did you see as the problems with the treatment program?

A. Again, kind of the same thing. I don't think there was good treatment occurring. I think they were understaffed, poorly trained, young, inexperienced therapists that really showed signs of lack of proper training, supervision and experience.

And, again, I go back to when the prison population went from 4,500 to 9,000, you end up spending too much time on finding the next bed, the next bunk, and not enough time on hiring appropriate and proper staff.

And this population grew so quickly over there that they really weren't ready for all of that. So finding the right staff, training the right staff.

And this is -- this is a very complex population that need the best therapists, the best training, and they need to know that they're going to get their -- their clinical time X number of hours every week.

And the treatment that was occurring was sporadic and it was inconsistent from unit to unit and supervisor to supervisor. So I knew

that this was going to be a huge challenge, and I had to find a clinical person that had the patience and fortitude to build a -- a clinical process that was really going to work.

And it took awhile to find the right treatment director. I looked inside of DHS, I talked to a couple of people, and I also then looked at a couple people in corrections that were sex offender experts, in my opinion.

And, again, I knew enough about sex offender treatment from my days in corrections to know that kind of the cutting edge treatment protocol was really coming out of Canada, and still is, in my opinion. There's some in Europe.

But DHS, again, in my opinion, was embracing sex offender treatment that was dated and they weren't keeping up with hiring. I think we were -- the day I drove up we were probably 50 clinical positions understaffed.

And as -- you know, the other thing I will say is that it's just like becoming a

good correctional officer, you don't drive up with a college education and you're good at it. It's all about experience, it's all about good training, and that process takes not months, but literally years.

And, you know, I'm sure Jannine will tell you that even today trying to keep up with the hiring process and the training process, and you make mistakes, you hire people that have no business in that business, they don't work out and you've got to get rid of them, start all over, and I'm sure that's occurring too. So it takes a long time to develop that. And there's no question that good treatment was lacking when -- when I took this job.

Q. Is the -- when you -- again, we're still on the 2008 when you started as executive director. Was it because they didn't fund the program sufficiently?

A. No, I don't believe that was the problem. Again, I've never had an easier time getting money.

Q. Why do you say that?

A. Because the politicians were not going to

find themselves in a position where they -- they could in any way be seen as being soft on sex offenders. It was -- it was no more complicated than that, in my opinion. They were careful.

In fact, when I got there, the other thing I did is the security staffing was something that was unusual, in my experience. And in corrections I had always been pushed to lower your per diem, lower your per diem. We had a high daily cost in corrections, so I spent -- the 12 years I was in corrections we brought the per diem from about $90 a day down to $78 a day, and we absorbed all the inflation and we got lots of accolades for that.

Well, I get over here and I developed a plan to cut some security staffing, and I was told no, we're not going to cut security staffing, and they didn't care that the per diem was $300 a day or 200 and some. So I could cut some other things, but -- and the union, of course, was making noise at that time too.

And we found ways to cut the per diem in

other ways, and one, of course, was just economy of scale, you get cheaper and cheaper. But that whole idea that you've got to lighten the financial load was just not present there the way it was in corrections.

Q. Did you -- did you -- let me back up.
When you came onboard in 2008, you understood under the current statute that nobody had been released?
A. Correct.
Q. And did you have discussions with, let's start with DHS, with respect to that problem?
A. I had discussions with Commissioner Ludeman

about that when I took the job and Wes Kooistra. And I made it real clear that I wasn't interested in taking this job if I -- my job was to just warehouse sex offenders.

Q. And what was the -- what was the response?

A. I got a positive response from Commissioner Ludeman and Wes Kooistra.

Q. What did you see as the problem when you started in -- in 2008, why weren't people being released?

A. Well, again, you know, and it's -- I'm sure the patients get tired of hearing it, but every time there was a new clinical director there was a new treatment protocol, so they were kind of going back to square one.

And when I got there and when I hired Jannine, she went through the process of trying to determine where everybody was at. And treatment records were lacking and she just was not comfortable making any strong recommendations until she had done an analysis of not only the treatment protocol, but where everybody else was -- everybody was at.

So, unfortunately, we kind of started over too in many respects. And, you know, as we got through the first couple of years, we were able to fast-forward a few people and move some people from up north where the beginning phases of treatment occur down to St. Peter, and we were, you know, I think slowly starting to figure out how much valid treatment people had had previous to our coming to try to give them some credit.

But of course we didn't want to make a mistake either. We didn't want to prematurely recommend somebody for campus privileges and have them take off. So we were very careful. We were keenly aware of the climate in which we were operating.

So, again, you couple that with being understaffed, with incredible growth and finding the right people, training them, and from the -- you know, the outsider, it was difficult to explain why it was taking so long.

And I'm sure she will tell you the same thing, we're -- you know, we're trying to validate where they're at in the process and

make appropriate recommendations.

But now I believe they have the community reintegration beds almost full and they're probably going to have to build more of those beds. So there's a lot of people now that are starting to push at the end of the process. But, of course, the process is incredibly cumbersome.

Q. And by process there you mean the SRB --

A. Right.

Q. -- and then Supreme Court Panel, the SCAP process?

A. Yeah.

Q. And why, in your view, is it cumbersome?

A. Well --

Q. Again, I'll still talking about 2008 when you came in, so that's what I want you to think about.

A. In 2008 there wasn't much happening at the end. I mean, Rydberg, John Rydberg --

Q. That was the name you were trying to think of earlier?

A. Yeah. Yeah. He was headed in that direction and there had been -- I don't recall exactly where he was in the process, but he was

headed towards being considered when we got there.
Q. And it was -- he was ultimately denied provisional discharge?
A. Right. Right.
Q. Let's talk a little bit about the SRB, SCAP process. When you came in 2008, do you know how many petitions were pending? I mean, do you know if there was a backlog?
A. There was a backlog. I can't tell you how many.
Q. Did you -- were they tracking that process at that time? Ere they tracking how long it took and how many -- how -- what the backlog was, et cetera?
A. No, we started that process of trying to figure that out, make some sense of it.
Q. As you recall in 2008, whose responsibility was it to appoint SRB members, you know, people to be on the SRB --
A. I believe it was the commissioner's.
Q. And did you have any conversations with the commissioner about the fact that there wasn't enough SRB members?
A. Yeah. That was kind of a perennial issue. I

don't think we ever really stopped having that discussion.

Q. Was there resistance to appointing more SRB members?

A. No, I don't think there was resistance, but I don't know that anybody held it as a real high priority either.

Q. Do you recall any statutory or a regulation, rule that prohibited the commissioner from appointing more SRB members?

A. I don't recall.

Q. At any time that you were executive director, do you recall any restrictions on the number of SRB members that the commissioner could appoint?

A. I don't recall.

Q. Do you recall having conversations either with Commissioner Jesson or Commissioner Ludeman about, you know, why don't we double the number of SRB members so we can get rid of this backlog?

A. I believe that we had discussion around that issue. I don't know that doubling it was ever a recommendation. But we -- we certainly had discussion around that issue

and the cumbersome nature, again, from my perspective, of -- of the process.

Q. That was -- but your view was there wasn't enough SRB members, correct?

A. Right.

Q. And your view is that backlog was an inappropriate, sort of, bottleneck in the release process?

A. It was one of the problems.

Q. Okay. So there was this SRB bottleneck, again, the bottleneck is my -- my word, that was, you know, slowing up the process of potential discharge for people, correct?

A. (Nods head.)

Q. What were the other bottlenecks in 2008 when you took over with the -- with the process?

A. Well, certainly the appeal process took time. And it was -- I saw it as a problem, but I didn't see it as a screaming priority, because, again, Jannine and I were nervous about recommending people until we had an opportunity to really do an analysis.

But the -- the number of people that had the -- I guess, according to the statute, the ability to weigh-in on the process, was a problem, in my opinion. And as time went on, the number of people that either were elected or served at the pleasure of was a problem.

I mean, I don't believe that this program can work, I don't care how good your

treatment is, under the current process. I think it -- I think it was well-intended, but it's an old, you know, unintended consequence thing. And until we can get politicians out of the process, I believe it's going to continue to be a problem.

Q. Let me -- let me just make sure I understand that. I think I do.

In the current discharge process, which was the same when you took over in 2008, the county attorney from the commitment county gets to have a say --

A. Yup.

Q. -- correct?

And, of course, the MSOP program gets a say?

A. Yup.

Q. And the person whose petitioning gets a say?

A. Uh-huh.

Q. And then the Attorney General's Office gets a say?

A. Uh-huh.

Q. And any interested person, that would include the victims or any victim advocacy groups, right, gets a say?

A. Uh-huh.
Q. That's when you mean when you say there was too many political figures?
A. Right. And the commissioners involved in the loop. And then, of course, the panel are elected officials as well.
Q. Right.
A. Great people, but they're elected officials and --
Q. So in your view, the sort of whole process was set up in a way that, intent aside, just couldn't work to discharge sex offenders back --
A. Right.
Q. -- into the community?
A. Right.
Q. And did you have instances during your tenure as executive director where you were supportive of a discharge, but the commissioner was not?
A. Well, I was supportive of -- well, and Rydberg was ultimately -- did go before the panel. I don't know that I had issues with either of my commissioners with respect to that.

Q. Okay. When you -- when you said that you and Dr. Hebert were nervous about sort of getting behind the release of someone until you had a chance to reevaluate them, did you put in place a process by which people were going to be reevaluated for their -- whether they should continue to be committed?

A. Not necessarily continue to be committed, because, you know, that -- that cow was already out of the barn. They were committed. It was where are they at in treatment and what -- what are their treatment needs, where should they be in the process, should they be phase 1, phase 2, phase 3. So that's what we focused on.

We -- we had some folks that -- and we had the other problem too. I remember we inherited a patient that had been fast-forwarded to the community prep program and he was not ready, and we were very nervous about that and we ended up ultimately, shortly before I left, having to bring him back inside, because he had an incident with a female patient from the security hospital.

So, again, that's another example of a -- in my opinion, a flawed process where the courts at the front-end said this guy should go right into the community prep part of the program.

The other thing that happens out there, that I'm sure you're aware of, and I'm editorializing, but I think it's an important point to make, is we -- and I testified in front of the legislature on this too.

But we got an old man, I think he was in his eighties, who the county didn't know what to do with and he had an old sex offense and he was in a probation violation, I believe, and he -- essentially, they let -- the courts let him sign himself into this program. An incredibly expensive program, and he had lots of medical issues. And we ended up with this guy.

I mean, and -- so, again, I believe it's not just at the back-end that there are issues, it's at the front-end too, again, because you have people who are elected involved in a process of sex offenders, which is a scary word to anybody whose standing for

election.
Q. Did you have discussions when you first became executive director about the possibility of -- I use the term less restrictive alternatives, but perhaps alternative placements --
A. Yes.
Q. -- for the people that were in the MSOP?
A. Yes.
Q. And was your view at that time in 2008 that there were people at Moose Lake or St. Peter who could be housed in a less restrictive alternative?
A. Yes. Generally speaking, I believe it would be safe to say. I won't speak for Jannine. But I -- I would not say that unless she said it. I'm not a treatment expert and I don't pretend to be, but as time went on we had lots of conversation about a number of patients that we were dealing with and probably would have been appropriate candidates for other programs or certainly a less restrictive alternative.

Q. But, in particular, the discussions that you had as you became the executive director, the mentally disabled group was a possible group that could have been handled in a less restrictive alternative?

A. Yes.

Q. And how about the -- what I would call the juvenile group, the young adults who had committed only juvenile offenses?

A. We certainly had concerns about that group.

Q. When you say you had concerns, what do you mean?

A. Well, the fact that, in my opinion, the program was stuck, and you have very young individuals who may or may not be very dangerous. Again, we -- I didn't know. But I just think that a program like this -- I mean, even if it were a program that was running like the Wisconsin model, to bring somebody to this level without exploring other options, or in Minnesota's case,

developing other options, is unacceptable. It -- it's swatting a mosquito with a 15-pound mallet.

And -- and then, again, let's assume that they jump through every hoop perfectly, then you get to the SRB process and -- and then it's -- it's a political crapshoot.

Q. So is it safe to say, Mr. Benson, that your view is that what's broken at MSOP can be generally characterized as the involvement of political figures in the decision-making process?

I don't think you and I would be here today if we had a different release process. If we were releasing three to eight a year and we were doing something on the front-end about the indiscriminate commitment of these people, I don't think we would -- I don't think we'd be talking about, you know, the fact that I took away their Vikings bed sheets.

Q. Do you agree that the conditions of confinement, if we can use that term sort of generally, do affect the treatment, that the two are interchangeable or linked?

A. I believe that they can affect the treatment. I don't believe that they are -- currently -- I haven't been there for two years, but I

don't think a lot has changed. I think the conditions of confinement that we instituted were necessary to create an environment that's conducive to change and good treatment and order in a facility.

I would argue until the cows come home that they're not punitive, they weren't intended to be punitive. They were intended to make it safer and consistent with -- with getting them prepared for release.

And, you know, my -- my sadness around that is I don't think it matters, because I don't think once they're ready for release they're necessarily going to get a fair shot.

Q. Would you agree with me that if we had a population of 50 or 100 or even 200, that we wouldn't necessarily need the controls that we need with a population of 700?

A. Again, if the release process and the intake process were fixed, I might -- I might agree with some of that. But I still think you have to have a sane environment.

You know, I go back to my experience in prison. When I started at Stillwater they had only 600 inmates and the place was a complete madhouse. Today they have 1,400.

And I went through this at Stillwater. I went back as the warden in '93 and instituted controlled movement and changed the visiting policy dramatically and all of those kinds of things, because, yes, I think it's -- you've got to have some controls when you have a small population too, but you might need more controls when that population grows.

Incompatibility in any closed society today is a -- it's an ever-present issue. People with gang issues and -- so there's

reason to have to separate people. Two people can't live together. You put one in unit A and the other in unit B and give them the same privileges as everybody else gets, and I think that that keeps -- it's defendable then, it keeps your -- people safe and it also defends the fact that they have equal access and equal protection issues that, you know, we all struggle with in these kinds of situations.

Q. Would you agree with me that part of the, sort of, need for these kinds of controls that we're talking about resulted from the fact that people were so frustrated about the release -- the progress through treatment and the release process, the patients, that is?

A. Certainly, I believe there is that frustration. But, again, I -- I don't know that what we instituted I wouldn't have done if we had a population of, you know, 200. I just think there -- the reason -- I mean, based on my experience and based on where I've been in -- in both corrections and in this environment, it just -- you've got to -- if you're going to provide treatment, you've

got to have a sane environment, you just do, and you've got to have some order.

Q. You've used that order sane environment several times. By sane you mean safe for the staff and safe for the patients?

A. Correct.

Q. Your background in -- with respect to this is mostly in corrections. Do you see a difference between the treatment facility that you were asked to run at MSOP and the prison facilities that you were asked to run in the DOC in terms of the need for, you know, the kinds of things that we've been talking about, restricted movement and such?

A. I think there's certainly different -- they're different. There's no question that they are different, but there are also parallels.

Q. Do you think that the MSOP protocols that you put in place are less restrictive than the prison protocols?

A. I think they're -- certainly, the way that MSOP runs is different than Stillwater and Oak Park Heights where I was the warden. There are, I think, glaring differences.

Q. MSOP being less -- less restrictive?
A. Yeah, yeah.
Q. Well, tell me what you mean by glaring differences. I'm --
A. Well, it's a -- it's a clinical environment and there's, I think, more ability to move around to make sure that people have adequate access to treatment.

It is a -- you know, it's certainly more therapeutic in the way that we do recreation, hobby craft, meals and privilege level grounds, moving about the grounds, going into the community down in St. Peter. Those things are all very different from prison. Discipline is very different.

We -- we have a very different due process system in prisons than we do at MSOP. Holding people appropriately accountable is very different with the unit restrictions at MSOP than they are in a prison setting.

And those were all lessons I had to learn too. I mean, I -- I didn't go in there with this notion, again, that I've got to do everything like we did in prison, but there were things that we did in prison that

addressed a specific issue and it worked, and some of that it made sense to me to have that discussion as we made changes in MSOP.

But I did that in a thoughtful way and in an inclusive way. I had lots of clinical people around the table and said we have this problem, these two guys are problematic if they are together, they -- one -- they prey on each other and help me develop a process where we can address things like that.

So when it came to things like visiting policy, phone monitoring, the due process, we had lots and lots and lots of discussion about how can we appropriately hold people accountable so that, you know, people can act out and a day later they have the same opportunity to act out. So we -- you know, we tried to be very thoughtful about how we did that.

And, of course, the Elliot Holly case that we spoke of earlier, you know, gave rise to some of that. I got the message very loud and clear that you can't just throw people in a room and really you can't in prison anymore either. I mean, due process means due

process, and I think it's a good thing that the courts -- it was one of the consent decrees that Stillwater was under back in -- as a result of time in the seventies.

So I have some -- some history with that and brought some of that, I guess, knowledge and history over to MSOP and then added clinical to the mix and tried to come up with something that works.

But, if people were really moving through the system, you're -- especially with the younger offenders -- or younger patients, there probably wouldn't be the level of acting out that there is and the feeling of hopelessness that there is in that environment and the fact that people don't participate because they've given up.

Q. When you and Jannine sort of decided that -- let me start over.

When you and Dr. Hebert sort of decided that you needed to start fresh with a -- with

a new treatment program when she came onboard, did you have in mind how long it would take for people to move through from phase 1 to phase 3 and then to CPS?

A. Well, I didn't. Again, I'm not the treatment expert, but I -- you know, those are all questions that I'm sure Jannine can answer. She will tell you, I'm sure, that every case is different, some people move quicker than others. There's kind of a mean average for a population like this where they are, you know, a pretty difficult group. The average number of felonies -- or victims, rather, is, you know, somewhere around 15 to 16.

So they're -- they're not an easy group to treat. But it all depends on how much treatment they had in prison, most of them came from prison or were in prison, how many treatment experiences they had.

And it isn't like she discounted any previous treatment they had at Moose Lake, but on the other hand, she sure didn't give them full credit for -- you know, if they said they were in treatment for five years, you know, there's no magic in that number.

She would do her own analysis and she could give -- go into great detail about where -- how she arrives at where she thinks people are on the treatment continuum.

Q. Do you -- did you have any experience -- I understand you don't consider yourself a treatment expert. But did you have some experience with the prison treatment programs for sex offenders?

A. I was around treatment programs for all the years I was in corrections. I spent a lot of time in the -- the Oak Park Heights program, high security. We -- I was very involved in developing a -- a chemical dependency sex offender treatment program at that facility and spent a fair amount of time there as we moved people through that program.

So I kind of get, you know, how it starts and how they move through and the magic of the therapeutic community and certain breakthroughs that patients achieve and others that get stuck and others who are gamers and those that just aren't interested in changing, and we have those at Moose Lake too. And then the -- those that desperately

want to change but just, for a variety of reasons, have trouble, including the mental health component that's forever present in these places.

The other population we didn't talk about that I find frustrating is the -- the elderly population. These guys are taking up a bed, they're 80 years old. If you go to the geriatric unit at Moose Lake you'll stumble over wheelchairs and walkers.

And, again, in my opinion, there has to be a better, cheaper alternative for these people. Many of them are not participating in treatment, but, I mean, you could put them in a -- in a facility that's, I think, cheaper and offers the same kind of protection that Moose Lake does.

Q. Well, I take it that you're -- you share my view that many of those people are no longer dangerous in the way that they were committed for, because they're either so old or so sick they just can't be a danger anymore?

A. That's correct.

Q. Mr. Benson, let me show you an e-mail chain that I've marked as Exhibit 3. Tell me if you can identify that for the record.
A. (Reviews document.) So this was after I retired.

Q. Well, tell me when you retired.
A. June 5th, 2012, didn't I? Yeah.
Q. Let me start on the first page. There's an e-mail from you, partway down there, and you see the e-mail address the somtel.net
A. Yup.
Q. Is that your personal e-mail?
A. Yup.
Q. Were you asked to search your personal e-mails for MSOP-related communications in this case?
A. I don't recall.
Q. Did you use your personal e-mail when you were still the executive director at MSOP?
A. Occasionally.
Q. In that e-mail you say, "Careful, Jannine! The best treatment in the world can't occur in the MSOP I inherited, they are a horse apiece." Do you see that?
A. Uh-huh.
Q. First of all, tell me what you mean by they are a horse apiece?
A. Well, I -- I'm not sure. I think it's -- I think I must have been referring to security and treatment.

Q. By horse apiece do you mean that they go hand in hand?
A. They have equal -- they're equally as important.
Q. In the sentence before that you say, "The best treatment in the world can't occur in the MSOP I inherited."
A. Uh-huh.
Q. What do you mean by, "The MSOP I inherited"?
A. Well, the mess that I walked into in 2008.
Q. That's what we were talking about earlier this morning?
A. Yeah.
Q. And that was both related to the security issues that we've talked about and the treatment issues?
A. Uh-huh.

Q. You have said earlier that you don't consider yourself to be an expert in treatment. Do you have any views on whether the treatment hours are appropriate at MSOP?

A. Again, I -- as somebody who has been around treatment for many years, but I'm not an expert and I -- I don't pretend to be, but I

think that treatment hours are coming along. I don't think that -- we were criticized for treatment hours in the legislative auditor's report, and I think we, you know, made an attempt at trying to address that.

But Jannine often told me that treatment hours mean different things to clients who are at a different phase in treatment. For many of them who are antisocial, and a fair number of sex offenders are, having a conversation in a day room in a unit during the evening might be very therapeutic to somebody who has just driven up and just starting treatment as opposed to isolating themselves where also many sex offenders get themselves into trouble when they isolate themselves and don't communicate and pretty soon they're into thinking and fantasizing and maybe even acting out on practices that are criminal or unacceptable.

Q. Do you -- you've mentioned several times that when you started at MSOP as the executive director that the treatment program, again this is my words, was not adequate.

A. Right.

Q. And during the four years or so that you were executive director, did you fix the treatment program problems?
A. Well, I think we made progress. I would submit that we made progress.
Q. Why -- why haven't more people been released, in your view?
A. I believe it's -- again, I keep using the

word stuck, but I think the -- the crux of the problem is the -- in terms of release, is the release process. I think it's -- it's politically charged and it's -- politics guide the thinking of those involved in that process. I also think the program is -- is committing people who probably could be treated at a less secure -- in a less secure setting. We have the largest program per capita in the United States. We have one of the -- I think it's the third or fourth largest program next to states like California and Florida.

Q. Do you -- and you think that's -- that is -- can generally be summed up as the problems with the commitment process and the problems with the release process?

A. I think those are the two overarching factors. And, again, I'm not excusing the -- the fact that treatment isn't perfect and the fact that it takes that piece of it a fair amount of time to get up to speed to -- particularly when you continue to make changes. But if we had a system that truly was a political at the front-end and we had

community resources that were available, I think we'd have fewer people in the program, thus, your -- your -- the challenge of hiring the right number of therapists would diminish dramatically. I think then also turnover goes down and treatment is more efficient and you're going to maintain staff, you're going to gain experience.

And then at the back-end, people really did -- if you had the same people looking at people coming in as you did going out, I think there would be some value in that too. I mean, I would structure it very differently than it currently is if I were --

Q. King?

A. -- king and could do it, but obviously I'm not.

Q. Okay. Do you think that the MSOP uses the current technology sufficiently?
A. Technology in terms of?
Q. Well, like GPS monitoring systems and the kinds of things that would allow more community-based treatment?
A. Well, we brought -- that's something else that we did up -- or down at St. Peter when I was actually still in corrections, but we got them going on a GPS monitoring on the campus. And I think -- I think the program does a pretty good job of that, but outside of that, I don't think we do.

I think there are other options for the courts too. I think the courts have -- I think this is a copout in some respects, just to throw them in this program. I talked about the scenario of the old man who more or less signed himself in and -- and it's -- you know, it covers their back side to commit them or at least file a petition.

And you get up into some of these, with all due respect, rural areas, and, you know,

the judges are not going to take that risk if they've got this option and they come.

So I think we could do more with GPS, I think we could do more with, you know, just the therapeutic technology that's available today, that -- there's home arrest or home monitoring, we could make better use of that technology.

But, again, citing any kind of even an outpatient program in greater Minnesota is going to be a challenge. DHS tried to get a facility for mental health juveniles up in, I believe it was Anoka here, about six, seven years ago, and just had a hell of a time. So there's always going to be that challenge.

But I think this is an area where people have got to rise above the politics and do the right thing or -- or this -- this program is going to, I think, eventually be deemed unconstitutional, and in its current form probably should be.

Q. Do you -- is it your view, Mr. Benson, that the security problems that you faced when you took over as executive director, were also

contributing to the treatment problems?
A. Yes.
Q. Because you -- when you talk about the horse apiece --
A. Yes.
Q. -- it's your view that those two go hand in hand?
A. Right.
Q. Can you have too much security?
A. Yes.
Q. And you can have not enough security?
A. Yes.
Q. Did the program swing too much the other way?
A. In my opinion, no. You mean --
Q. Too much security.
A. Too much security? No. But there's always room for adjustment. I mean, some of these things you do and you tweak it forever. I mean, you -- for instance, room allowable items, we talk about that -- we talked about that in corrections forever. I mean, we had a room allowable items committee and we'd have agendas every week and we'd talk about, you know, should we allow an eagle feather or shouldn't we. I mean, those things are --

it's never done. I certainly wouldn't be insulted if somebody came along and said we've got to let them have their Vikings bedspreads. I don't know why, but, I don't have all the answers either.

But I -- it's a constant -- it's a constant issue in any facility. It sure was in prison, you know, who was really king, was it clinical or was it security. Prison, it's pretty clear that you can always hide behind, well, that's -- we're doing that for security. It becomes more challenging in the MSOP because it's a program for civil commits.

So I think you have to -- you have to be able to articulate why you do what you do as it pertains to security issues. You can't just kind of hide behind it. I think that was easier in corrections.

We had the other problem -- we had that problem in corrections, and I think it was legitimate, a legitimate concern of their therapists, too much -- they'd just hide behind it, well, we can't do that because of security, well.

So we were always, you know, kind of monitoring that. And -- and I think I -- I think I did a good job as -- certainly as a warden and associate warden of bringing some good balance to those therapeutic communities that didn't always favor security. I had lots of interesting discussions with the captain about different things that we were doing in some of our clinical programs.

So over in MSOP, I mean, there was the same thing, but there were some things that were going on in clinical that I -- I struggled with too from a security perspective and from a public perception perspective that I just had some feelings about.

Q. You mentioned earlier that you thought the Dru Sjoden incident affected the Minnesota sex offender program. Can you talk about that a little bit more?

A. Well, it had direct and dramatic impact on

the program. I think one of the first things we did, I was the deputy in corrections then, and it -- it required, in my opinion, I'm the one that went to my commissioner and said, you know, the first thing we should do is make sure we don't have another Alfonso Rodriguez running around out there.

And so I said I think you should review every level 3 sex offender that is out on supervised release, and we did that. And there were a number of those that were gathered up and a petition was filed and they came into the program.

Now, all we did is said you might want to take another look at this level 3 to a county that's been released. And, boy, if they got a letter to that effect, you know, nine out of ten of them were then civilly committed.

There were level 3 sex offenders that were doing pretty well in the community that ended up back in the program. So that was, again, what I would characterize as one of the overcorrections of -- of that process. It was well-intended, just take another look, just make sure we didn't miss one here, and

pretty soon, good lord, we had lots of them. So that was, I think, one of the pieces.

The -- just the whole review process at the end of their corrections time and review by the counties, in addition to that level 3 review was another piece that I think impacted the population in a negative way.

And I -- you know, I'm not saying it was -- they were all inappropriate. But, obviously, I think there was another overcorrection there. So those would be the two areas that I think at least initially had a great deal of impact on the size of the program and the -- you know, the width of the net. Counties just weren't willing to take chances.

Q. Let me show you what I've marked as Exhibit 4. And tell me -- which I will represent to you is an executive order from Governor Tim Pawlenty signed in, I think it's July of 2003. You're familiar with that?

A. Yup.
Q. Is this -- well, tell me -- tell me what you understood this executive order to mean when you were at MSOP.
A. Well, he -- he will tell you, as I heard it many times, that it was a document that said we're going to follow the law. And that was kind of the -- the explanation that came from the governor's office. It was not necessarily that nobody would ever be released.

Q. You -- you mentioned several times today that you're sort of perceived by the patients as the person who turned it into a more prison-like setting. Those are my words.

In retrospect, did you -- did you swing the security needle too far to the other -- to the other side?

MR. WINTER: Asked and answered.

BY MR. GUSTAFSON:

Q. You can answer.

A. I -- I really don't think so, no. I think you can always argue, as I said, you know, did I or didn't I. But in my opinion, I really don't think I did. The other thing I -- you know, there are things that happen in these places that I'm sure you haven't heard yet about the sexual misconduct that occurs in these places.

We had a -- an assistant director down at St. Peter who was beat half to death in his home, Gary Graham, before I came, but it was a -- it was supposed to be a murder. He was

supposed to have been killed. And he wasn't killed, but he was out of work for about six, eight months with a concussion that was intended to kill him. And that occurred from inside the walls of MSOP. We had --

Q. Do you mean by that somebody hired someone to do it?

A. Right. Yeah.

Q. Okay.

A. And I had a sex offender on his deathbed tell me the whole gig of how this thing went down, a credible guy, a guy I had known for years in corrections.

We've had way too many boundary issues with staff. That's another problem you get when you hire lots of young junior staff, both male and female boundary issues. But --

Q. You mean sexual boundary issues?

A. Well, or in the case of males, not always sexual it might be --

Q. Physical?

A. -- bringing stuff in or just doing favors for clients that you shouldn't. And so there were all of those things in play too that led to having a male monitoring policy that was

defendable, monitoring phone calls, again, in cases where we had reasonable cause, visiting room policy around what you could bring in and how much you could touch, and room allowable items policies.

That all fed into some of these things that always go on in these places, but the number of them that was going on there was outrageous.

I mean, I had more instances of inappropriate conduct between staff and -- and clients with 600 sex offenders than I did with 9,000 inmates. And, again, it was training issues and -- around boundaries and hiring lots and lots of staff really quickly that didn't have the experience and expertise, and also dealing with a clientele that's incredibly manipulative.

Q. You agree with that -- that that's a problem when you have that many people in one place?

A. I think -- I think it's a challenge. I don't know that it's an unsurmountable problem, but

it certainly is a challenge. And I have to tell you that they designed that facility kind of after a building design that we came up with at a medium-security prison. And I don't know that I'd design it -- a treatment center for sex offenders the same way. Now, can it work, yeah, I think it work, but I think it adds some challenges.

Q. Did you -- we talked earlier a little bit about the legislative auditor's report, and you indicated that you had some consultation with the legislative auditors, with Jim Nobels' office while the report was being done. Are there things in that report that

you disagree with?

A. Yeah.

Q. Can you tell me off the top of your head or would you like to look at it? I mean, it's a long document. I don't want you -- and I'm not going to have you --

A. No, I just think there are a couple of areas. I mean, I -- as I said, I've worked with Jim for -- and his staff for many years. And they truly, I think, are a great group and they've kept the state out of lots and lots of trouble with their oversight over the years. And he did numerous reports for us in corrections, so I had a lot of experience with him.

I think the area -- if I had to point to an area that I struggle with the most, it's the area around treatment hours and the efficacy of treatment.

I think it's hard for any of us who don't live in that world and who don't really understand how you treat and how you measure and how you keep score, to try to define that.

And we kind of challenged some of their,

I guess, definition of, you know, the treatment process and the treatment hours. The legislators too, everybody likes to measure in black and white. And, you know, the world would be an easy place if we could.

But, you know, Jannine has a different idea of what a treatment week looks like than the chair of a -- an oversight committee. And she's just really reluctant to say that they need X number of hours and the hours need to look like this.

And she would always say, well, you know, too much treatment for some of these guys can be very counterproductive. And, of course, that sounds very defensive and it sounds like she's -- but I heard her say that in the car when we'd ride together to St. Peter every week time and time and time again, how much they can tolerate and then they've got to pull back and take a break, and how you get them to these thresholds where they break through and can start to own some of their behavior.

You know, so many of these people are so damaged, I mean, so damaged from the time

they were little, little kids, and to get them to understand their own pathology is a process that is different with every one of them.

So to say, well, all 700 of them need 12 hours of treatment every single week and they've got to be sitting in a group and they've got to be -- that's just not valid and it's -- it's short-cited from a clinical perspective.

I'd like it too, it would be easier for me to go up in front of a committee and say here's what it is, it's six hours of this and two hours of this and damn it, that's -- that's the treatment world.

But it's -- therapists, at least with this group, will -- are going to be real reluctant to approach it that way.

So I will say that the chapter on clinical hours, I don't think it's perfect. I don't think it's all BS either. But I think it's -- as good as his people are, I don't think they have any better idea of how it should look than anybody else and -- so I -- I think, you know, if there's an area

where we got dinged that I thought was somewhat unfair, it would be that area.

Q. Uh-huh. By and large, would you say you generally agree with the auditor's report with that exception?

A. I think there's a lot of good information in there. And I don't agree with everything, but I think it's a good report and I think it was helpful. And, you know, as hard as it is to say, it's kind of a critical report, but you don't change something like that overnight.

I mean, I was with that prison system and I knew what it looked like in '74, I knew what it looked like in '80, and I knew what it looked like in '90 and '96 when I became the deputy, and it's a process, it takes a long time. And, again, that's a system where people are moving through, people got hope, and over here it's -- you know, it's just tougher when you have one guy who has got out in, what, now, 20 years. That's just tough.

Q. Do you think it's going to change if the court doesn't intervene?

A. I think it will be real challenging for

either party or both parties to come together and take action. I really do. And the problem -- when you -- when you don't think it can get worse, I think it can, because I think the worst thing that could happen is if they finally throw up their hands in disgust, like I said, and said, you know what, let's just ride it out with the 700 we got, but starting tomorrow let's just sentence every sex offender to an indeterminant sentence.

Then you got ten times the problem, because then the peeping Toms are never going to get out of prison, so you're going to -- again, it's that unintended consequence thing.

So I think, you know, that to me is the easy, quick fix. But they haven't done it yet, and I think they -- you know, they've talked about it. They've talked about indeterminant sentencing for at least some level of sex offenders.

But I just -- unless you have an impartial body releasing them, I think that would be a mistake. So I think it would be -- a better approach would be to fix the

program. I just don't know that there's the political fortitude to do it.

Q. We talked earlier about less restrictive alternatives in the community. You dealt with the legislature for -- for many years --

A. Yeah.

Q. -- with your time at corrections and your time at MSOP. Is the security concern preventing those less restrictive alternatives from being developed in Minnesota?

A. I don't think it's as much the security concerns as it is -- would be the local politics going into a community and saying we're going to set up a 12-bed sex offender program for juveniles or something. I think that would be the -- the real challenge. I

think you can do -- there's all kinds of ways, especially in today's world, you can do good security without barbed wire fences, and we talked about some of them.

I don't know if you have -- bringing up another topic, but the -- there's a New York model too that we really liked in terms of diverting people at the front-end. Jannine and I did a lot of analysis of that and I really liked that approach. I think it's -- it's probably the best in the United States in terms of heading them off before they fall into the black hole.

Q. And that -- but that model can't work in Minnesota because there are no facilities of that kind in Minnesota?

A. Right, not right now.

Q. Even though the statute provides for that opportunity --

A. Yeah.

Q. -- there just aren't any facilities --

A. Right.

Q. -- that a judge could send someone to?

A. Yeah.

Q. And so you'd agree with me that that's --

that's a real weakness in our program is the lack of those community-based facilities?

A. Yes.

Q. Okay. Is there anything that I haven't asked you about that you'd like to talk about today in terms of topics?

A. No. The other thing -- I mean, I've been away from the program for a couple of years, and the one thing, I think I told counsel this the other day too, that -- and I -- I hired Jannine, and I looked at a lot of different possibilities for that position, not a lot, but four or five anyway.

And I think she is one of the -- in terms of a clinical therapist, I think she's probably one of the best in the nation. I really believe that. I was a member of ATSA and MnATSA, and she is highly respected and well-regarded.

And she doesn't always have the political sense that you'd like to see, but she's really committed to her life's chosen work, and I think that the state is lucky to have her. I don't know how much longer they can keep her if things don't change.

And I think all of us want to see -- if we're going to have this program, it's got to change. We can't -- none of us should dilute

ourselves by thinking we can just kind of continue to kerplunk along and to keep dodging these -- these bullets that -- and -- and cards that the court is giving us.

I mean, they've kind of put us on notice that something has got to change here. Unfortunately, I think it's very hard for the program to change it, the commissioners to change it, whoever he or she might be, and I -- I think it's going to be tough for the legislature.

So I'm hoping that between, you know, the judge and just continued conversation, something can happen here or don't ever think that it can't get worse. But it's unfortunate.

It's a tough place to work when -- when you know it's broken and every time you go for help to fix it they kind of look the other way and -- but I think if they slowed down the intake that would help dramatically.

Q. I wanted to get a sense for your general feeling about 2008 when you started versus 2012 when you left how the facility was operating in 2012 as opposed to when you found it?

A. I think -- I think we made -- as I mentioned, I think we made lots of progress, I really do. I think that -- I think people who wanted to participate in treatment could and in many cases did.

When I got there the treatment participation was down around 50 percent. When I left it was up around 90. And people, you know, start treatment, stop treatment, start treatment. There's always going to be a lot of that. But the treatment participation was much higher.

We did have one feeble escape attempt

about 2011, I think it was, '10, four guys up at Moose Lake. But other than that we had no real escape attempts or people trying to get out, not that they liked it there any better. But I think that the whole phase 1, 2, 3 treatment process was beginning to work and take hold. Staff turnover had slowed way down. The number of clinical staff that were hired and retained was at a good number.

So I think in all of those areas -- and costs were -- dropped a little bit. We opened new beds. And I think we were in a much better place in 2008.

But, I mean, the elephant in the room continues to be that we've only released one person. So you can say all of these wonderful things, but that's not how we measure success in this program.

Q. You've talked about the political pressures at some length generally speaking and then the two examples that you gave, one was there is the situation with the big screen TVs that you discussed and also the situation with your concern related to escorted trip s to the state fair, right?

A. Uh-huh.
Q. Did you ever -- or are you aware of any time when someone on a treatment team did not advance someone in treatment as a result of political pressures?
A. No.
Q. Are you aware of a time when someone on the treatment team made a different decision with respect to discharge or transfer than they would have otherwise with --
A. No.
Q. -- as a result of political pressures?
A. No.
Q. Are you aware of any time when a risk assessor made a different decision as a result of political pressures?
A. No.
Q. Can you give me a general idea of what MSOP's response was to the report of the Office of the Legislative Auditor, did you make changes, what was the process, et cetera?
A. Yeah, the -- they made some minor changes. I don't think it was atypical. Again, having been through that process numerous times both here and in corrections, they -- they

listened, they tweaked it, they -- they made some adjustments to their report after getting additional information. So I -- I sure wouldn't say it was an unfair report.

Q. Okay. And -- but I'm asking about the -- just now were you addressing the changes that the Office of the Legislative Auditor made to their report?

A. Right.

Q. Okay. So after that, upon receiving the final report from the OLA, did -- how did MSOP react upon receiving that report?

A. I mean, we took it very seriously. We tried to -- to the extent that we could, those areas where we had authority to make changes, I think we developed work plans and -- and tried to implement some of the recommendations and changes that they suggested. But, again, there were obviously a fair number that were out of our hands.

Q. Do you remember which ones you were able to address?

A. Oh, gosh, I don't --

Q. Or just some examples, whatever you can remember.

A. Well, Jannine and her team took a hard look at treatment hours and how we might better define that so that people like us, lay people who really weren't from the treatment world, could better understand what -- what the definition of treatment for civilly committed sex offenders were and the fact that we think what they were doing was defendable.

So she tried to realign that in such a way that it was more consistent with some of the recommendations that the auditor's report made around that. That would be one example.